Albert Chew v Hong Leong Finance Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO S2-23-53 OF 1999
KAMALANATHAN RATNAM J
7 SEPTEMBER 2001

Tort *— Defamation — Libel — Police report and complaint to Bar Council — Forged discharge document attested by legal assistant — Falsified attestation — Usual practice of legal firms, whether court should condone illegality — Whether defence of qualified privilege applied — Unmitigated delay in filling suit — Whether libel proved*

The plaintiff was a legal assistant attached to the firm of LS Chua & Co. A police report was lodged requesting the police to investigate the alleged forgery of a discharge document which was attested by the plaintiff. A formal complaint was also made against the plaintiff to the Bar Council requesting for an investigation to be conducted by the Disciplinary Board of the Bar Council. Having considered the complaint and the explanation from the plaintiff and the report of the Investigating Tribunal, the Bar Council dismissed the complaint. The plaintiff brought an action for defamation against the defendant whereby it was pleaded that the words contained in police report in their natural and ordinary meaning charged the plaintiff and/or implicated him with and/or imputed the offence of forgery in respect of the transaction adverted to therein. In respect of the complaint to the Bar Council the plaintiff pleaded that the said words in their natural and ordinary meaning charged the plaintiff and/or implicated him with and/or imputed the offence of forgery and that the said words were also calculated to further discredit him in his profession as an advocate and solicitor by falsely and maliciously attributing to and/or connecting him with unethical and/or dishonorable and/or discreditable and/or disreputable conduct that warranted him being disciplined. The plaintiff therefore prayed for special damages and damages for libel.

Held, dismissing the claim:

(1) Having read the police report and the complaint to the Bar Council, the court could not found it anywhere stated that the plaintiff was the author of the forged document. All that the defendant said was that the plaintiff had attested as true, a document which was not a true document (see p 507D).

(2) The plaintiff had certified to the genuineness and correctness of an untrue copy. The defence of qualified privilege must succeed in this case. The defendant had a duty to report because of a serious allegation of forgery. If the discharge of charge which the plaintiff was alleged to have attested to was genuine and a true document, then the charge would have been discharge and the defendant's charge would have been duly registered. In the circumstances, the court could not fault the defendant for lodging the police report and the complaint to the Bar Council (see pp 507H, 508C–D).

(3) The initial misconduct of the plaintiff was the causa causans for the defendant to lodge a police report and the complaint to the Bar Council. If this court accepts the plaintiff's explanation that it is the practice of most legal firms to do as he did then it would be tantamount to condoning an illegal or improper act by this court. Legal assistant should have the courage to tell their respective employers that they will not be a party to any illegal or improper conduct (see pp 507C, 508E).

(4) Another factor that the court had to take into consideration was the plaintiff's unmitigated delay in filing this suit. His explanation that he was emotionally upset could not be a sufficient and valid reason for failing to forthwith file a suit to vindicate his reputation. He filed this suit hardly a month or two before the six-year limitation period had set in and no satisfactory explanation was given for the delay (see p 509B–C).

[**Bahasa Malaysia summary**

Plaintif merupakan seorang pembantu guaman yang bekerja dengan firma LS Chua & Co. Laporan polis telah dibuat meminta pihak polis supaya menyiasat jenayah pemalsuan yang dikatakan telah dilakukan ke atas suatu dokumen discaj yang disahkan oleh plaintif. Satu aduan rasmi telah pun dibuat terhadap plaintif kepada Majlis Peguam memohon supaya satu siasatan dijalankan oleh Lembaga Tatatertib Majlis Peguam. Setelah menimbang aduan tersebut dan penjelasan daripada plaintif serta laporan Tribunal Siasatan, Majlis Peguam telah menolak aduan tersebut. Plaintif telah memulakan suatu tindakan fitnah terhadap defendan yang mana ia dihujahkan bahawa perkataan-perkataan yang terkandung dalam laporan polis dalam maksud lazim dan biasa mereka telah mendakwa plaintif dan/atau mengaitkannya dengan dan/atau menuduhnya dengan kesalahan pemalsuan berhubung dengan transaksi yang dirujuk di dalamnya. Berkaitan dengan aduan kepada Majlis Peguam, plaintif berhujah bahawa perkataan-perkataan tersebut dalam maksud lazim dan biasa mereka telah menuduh plaintif dan/atau mengaitkannya dengan dan/atau menuduhnya dengan kesalahan pemalsuan dan bahawa kata-kata tersebut juga dijangka menjatuhkan namanya dengan lebih lanjut dalam profesyennya sebagai seorang peguambela dan peguamcara dengan mengatakan secara palsu dan berniat jahat mendakwa dan/atau mengaitkannya dengan kelakuan yang tidak beretika dan/atau tidak bermaruah dan/atau memalukan dan/atau yang kurang hormat yang mewajarkan tindakan tatatertib diambil ke atasnya. Maka plaintif memohon ganti rugi khas dan ganti rugi untuk fitnah bertulis.

Diputuskan, menolak tuntutan tersebut:

(1) Setelah membaca laporan polis dan aduan kepada Majlis Peguam, mahkamah tidak menjumpai apa-apa kenyataan bahawa

plaintif merupakan penulis dokumen yang dipalsukan. Apa yang dikatakan oleh defendan ialah bahawa plaintif telah mengesahkan apa yang benar, satu dokumen yang bukannya satu dokumen yang benar (lihat ms 507D).

(2) Plaintif telah mengesahkan kesahihan dan ketepatan salinan yang tidak benar. Pembelaan perlindungan bersyarat mesti berjaya dalam kes ini. Defendan bertanggungjawab membuat laporan disebabkan dakwaan jenayah pemalsuan yang serius. Sekiranya discaj caj yang mana plaintif dikatakan telah mengesahkan adalah benar dan satu dokumen yang benar, maka caj itu tentunya dilepaskan dan caj defendan pastinya akan didaftarkan seperti yang sepatutnya. Dalam keadaan ini, mahkamah tidak boleh mempersalahkan defendan kerana membuat laporan polis dan aduan kepada Majlis Peguam (lihat ms 507H, 508C–D).

(3) Salah laku permulaan plaintif merupakan *causa causans* yang menyebabkan defendan membuat laporan polis dan aduan kepada Majllis Peguam. Sekiranya mahkamah ini menerima penjelasan plaintif bahawa ia merupakan amalan kebanyakan firma guaman untuk membuat sebagaimana yang dilakukannya, ia sama sahaja dengan memaafkan tindakan yang salah di sisi undang-undang atau yang tidak wajar oleh mahkamah ini. Pembantu guaman seharusnya berani memberitahu majikan masing-masing bahawa mereka tidak akan menjadi pihak kepada apa-apa kelakuan yang menyalahi undang-undang atau yang tidak wajar (lihat ms 507C, 508E).

(4) Satu lagi faktor yang harus diambil kira oleh mahkamah adalah kelewatan plaintif dalam memfailkan guaman ini. Penjelasan beliau bahawa emosinya tersinggung tidak boleh diterima sebagai satu alasan yang mencukupi dan sah atas kegagalan memfail satu guaman dengan serta-merta untuk membersihkan reputasinya. Beliau memfailkan guaman ini tidak hampir sebulan atau dua bulan sebelum tempoh had masa enam tahun luput dan tiada penjelasan yang memuaskan telah diberi untuk kelewatan tersebut (lihat ms 509B–C).]

Notes

For cases on libel generally, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 263–252.

Legislation referred to

Defamation Act 1957 s 12
National Land Code 1965 s 211(2)

Terrance Marbeck (*SG Yahna* with him) (*TS Marbeck & Co*) for the plaintiff.

Robert Lazar (*TM Yap* with him) (*Shearn Delamore & Co*) for the defendant.

Kamalanathan Ratnam J:

Facts

At all material times the plaintiff was a practicing advocate and solicitor. Between 1981 to 1986 he was a legal assistant attached to the firm of LS Chua & Co, having its principal legal practice at Batu Pahat, Johore. The said legal firm had a fair share of conveyancing work within its portfolio. It acted for a number of housing developers, banks and financial institutions. It therefore handled matters relating to the sale and purchase of landed properties and the consequent financial work arising therefrom such as loan documentation and land charges. As a legal assistant, the plaintiff handled the firm's conveyancing portfolio. One Kim Hiong Realty Sdn Bhd ('the developer') was the registered proprietor of land on which was erected a unit of double storey semi-detached house, held under CT No 1022 Lot 4396, Mukim Simpang Kanan, Batu Pahat, Johore ('the said property'). At that time the said property was charged to Public Bank Bhd ('PBB'). On 21 April 1983 the developer entered into a sale and purchase agreement in respect of the said property with Lim Liang Song and Tan Goi Kew ('the purchasers'). The purchasers obtained a loan of RM85,000 ('the loan') from one Visia Finance Bhd ('Visia'), formerly known as Sim Lim Finance (M) Bhd, to purchase the said property. LS Chua & Co were engaged to prepare the sale and purchase agreement and the loan documentation, including the charge documents. The said legal firm then wrote three letters dated 27 September 1983, 4 October 1983 and 17 October 1983 respectively to Sim Lim Finance (M) Bhd. In these letters the said legal firm falsely represented that the said property had been discharged from PBB and that the same had been presented for registration. The said firm further requested that the said loan be released to it as stakeholder upon the firm's undertaking to refund whatever sums released (not exceeding the loan amount) in the event that the said charge could not be registered in Visia's favour for whatever reasons. These representations were totally untrue because the said property had in the meantime and unknown to Visia, been charged to Malayan United Finance Bhd ('MUF') on 12 October 1983. On 18 October 1983 the loan was released to the developer on the strength of the representation contained in the three letters from LS Chua & Co. In fact in its letter dated 17 October 1983, the said firm had specifically stated that a charge in favour of Visia had been duly presented for registration. After the release of the said loan, LS Chua & Co failed to deliver the title deed and charge documents to Visia for safekeeping. In the circumstances, Visia wrote to LS Chua & Co through its Batu Pahat Branch, requesting for the said documents. However it was informed by the said legal firm through its letter dated 5 July 1984 that the documents were still in the process of registration at the Johore Land Registry. Sometime in June 1986 the plaintiff left the firm of LS Chua & Co to start his own legal practice.

By a further three letters dated 6 March 1985, 26 June 1986 and 21 April 1987 respectively, LS Chua & Co in reply to Visia's requests for the said documents, continued to maintain that the title deed and charge

documents had not as yet been returned from the Johore Land Registry. On 3 September 1988 the Johore Land Registry rejected the request to register the charge in favour of Visia on the ground that the document of title was not presented. Upon receiving the rejected documents, Visia then wrote to MUF requesting for the document of title but MUF refused to comply with the request stating that the redemption amount had not been paid. It was at this stage that a discharge of charge purportedly executed by MUF was then forwarded to MUF. The said discharge of charge was alleged to have been signed by one Goh Hock Chuan, the then Senior Manager of Loans of MUF. The said signature was attested by the plaintiff. Goh, who testified for the defendant as DW4, denied that it was his signature.

On 15 August 1989 Visia filed an action against MUF and a few others in the Muar High Court vide Civil Suit No 22–44–89. In its pleaded defence MUF reiterated its position that the discharge of charge was not signed by it or its attorney and that the same was a forgery. In that same suit Visia applied to add the plaintiff as the sixth defendant. However, the learned Senior Assistant Registrar refused the said application and on appeal the learned judge also refused the said application. A subsequent attempt to add the plaintiff to the suit in the form of an appeal to the then Supreme Court was withdrawn by Visia on 26 May 1993.

On 19 May 1993, one Goh Chan Tau, acting on behalf of Visia, lodged a police report requesting the police to investigate the alleged forgery. The said report reads as follows:

> BPR 3672/93 Police Report (f)
> Case No: HQR/LSD/BPT/4368/HOL(O)
> BORROWER: Lim Liang Song & Tan Goi Kew
>
> A housing loan of RM85,000 was approved to the above named borrowers to enable them to purchase a unit of double storey semi detached house in Taman Bandar Batu Pahat, Johore. The loan of RM85,000 was released on 18 October 1983 to the developer through M/s LS Chua & Co, a solicitor firm upon confirmation that the charge documents have been duly presented for registration and solicitor's undertaking to refund the loan sum in the event of no registration of our charge.
>
> However, the said solicitors failed to register the charge in favour of Visia Finance Bhd (VFB) and also to effect transfer of the title from the developer M/s Kim Hiong Realty Sdn Bhd (KHR) to the purchasers/borrowers.
>
> Since release of the loan, the title deed and charge documents were not delivered to VFB for safe-keeping. As such, our Batu Pahat Branch had written to LS Chua & Co requesting for the documents but were informed that the documents were still in the process of registration at the Johore Land Registry. Now, the loan is without an enforceable loan document.
>
> A search report in September 1987 revealed that the subject property was charged to Malayan United Finance Berhad (MUF) and it was registered on 12 October 1983, six days before the release of our loan. A private caveat in our favour was lodged in October 1987 to protect our interest.
>
> The solicitor, Mr Albert Chew was the Legal Assistant, attended to and attested the Sale and Purchase Agreement, Discharge of Charge, transfer and

charge in respect of the said property. He had in his statement of defence stated that he personally attested as witness to the discharge document.

The discharge of charge which was executed by MUF and attested by Albert Chew is being disputed by MUF. MUF lodged a police report on forgery of discharge document.

Based on the foregoing, I hereby lodge in this police report to call for investigation into the forgery.

SALINAN DIAKUI SAH
Sgd
... ...
KETUA POLIS DAERAH
BATU PAHAT
20 May 1993

Subsequently, one Tan Boon Chew acting on behalf of Visia lodged a formal complaint with the Bar Council of Malaysia, against the plaintiff, on 17 June 1993 requesting for an investigation to be conducted by the Disciplinary Board of the Bar Council. The said complaint reads as follows:

HQR/LSD/BPT/4368/HOL(O)
June 7, 1993
The Bar Council
5, Jalan Tun Razak
50050 Kuala Lumpur
Attention: Zainur Zakaria

Dear Sir
Lim Liang Song & Tan Goi Kew
Housing Loan of RM85,000

We wish to lodge in a formal complaint against Mr Albert Chew, the solicitor who attested the signature of the Attorney for Malayan United Finance Berhad (MUF) on the discharge of charge pertaining to the property held under Lot No 1181, HS (D) No 5171 in Mukim Simpang Kanan, Daerah Batu Pahat. On June 1988 MUF reported to police that signatory to the said discharge document is a forgery.

2 Mr Albert Chew is currently operating his law firm at 35B, Second Floor, Jalan Mengkudu, Taman Datuk Abdul Rahman Jaafar, 83000 Batu Pahat.

3 The details of the case are as follows:

On 16 June 1983, we approved a housing loan of RM85,000 to Mr Lim Liang Song and Ms Tan Goi Kew to enable them to purchase a unit of double storey semi-detached house in Taman Bandar, Batu Pahat, Johore. The loan of RM85,000 was released on 18 October 1983 to the developer through M/s LS Chua & Co, a solicitor firm upon its confirmation that the charge documents have been duly presented for registration and the solicitor's undertaking to refund the loan sum in the event of no registration of our charge.

4 However, the said solicitors failed to register the charge in favour of Visia Finance Berhad (VFB) and also to effect transfer of the title from the developer M/s Kim Hiong Realty Sdn Bhd (KHR) to the purchasers/ borrowers.

5 Since release of the loan, the title deed and charge documents were not delivered to VFB for safe keeping. As such, our Batu Pahat Branch had

written to LS Chua & Co requesting for the documents but was informed that the documents were still in the process of registration at the Johore Land Registry. Now, the loan is without any enforceable document.

6 A search report in September 1987 revealed that the subject property was charged to Malayan United Finance Berhad (MUF) and it was registered on 12 October 1983, six days before the release of our loan. A private caveat in our favour was subsequently lodged in October 1987 to protect our interest.

7 The solicitor, Mr Albert Chew was the Legal Assistant, attended to and attested the Sale and Purchase Agreement, Discharge of charge, transfer and charge in respect of the said property.

8 Enclosed herewith the following documents for your attention:

(a) Duplicate charge (returned by land registry)
(b) Discharge of charge (returned by land registry)
(c) S&P between Kim Hiong Realty Sdn Bhd and borrower.
(d) Transfer form
(e) Correspondence letters from M/s LS Chua
(f) Police report lodged by VFB against Albert Chew
(g) Search report dated 17 September 1987

9 We hope that our complaint would warrant an investigation to be conducted by your disciplinary committee. Should you require any clarification, please contact the undersigned.

Yours faithfully
For VISIA FINANCE BHD

Sgd
TAN BOON CHEW
Assistant General Manager
Loans Supervision Division

Following the plaintiff's reply to the complaint by Visia, the Disciplinary Board of the Bar Council, having considered Visia's complaint and the explanation from the plaintiff and the report of the Investigating Tribunal, dismissed the complaint on 11 July 1996. On 10 December 1993, the defendant signed a sale and purchase agreement with Visia which was already placed under receivership pursuant to a court order dated 23 September 1993. The completion date for the said agreement was 31 December 1993. By this agreement inter alia the defendant agreed to assume all liabilities incurred or to be incurred by Visia in connection with the business (see cl 2.1.2). The plaintiff has based his cause of action on the police report and the complaint to the Bar. Prior to issuing out this writ the plaintiff sent, through his solicitors, a letter of notice before action. The said letter was dated 23 April 1999. This was just before the limitation period had set in.

Case for the plaintiff

The plaintiff pleaded in respect of the police report that the said words in their natural and ordinary meaning charged the plaintiff and/or implicated him with and/or imputed the offence of forgery in respect of the transaction

adverted to therein. In respect of the complaint to the Bar Council the plaintiff pleaded that the said words in their natural and ordinary meaning charged the plaintiff and/or implicated him with and/or imputed the offence of forgery and that the said words were also calculated to further discredit him in his profession as an advocate and solicitor by falsely and maliciously attributing to and/or connecting him with unethical and/or dishonorable and/or discreditable and/or disreputable conduct that warranted him being disciplined. The plaintiff therefore prayed for special damages amounting to as follows:

Particulars of Special Damage

(a)	Travel costs to attend at solicitors' office and Disciplinary Board proceedings @ RM500 per round trip x 15 trips (Batu Pahat/Kuala Lumpur)	RM 7,500
(b)	Legal fees incurred for Disciplinary Board proceedings	RM 8,000
(c)	Loss of income (estimated @ RM750 per day x 15 days)	RM 11,250
(d)	Telephone/fax, postage and photostating costs	RM 1,000
Total		RM 27,750

The plaintiff also prayed for damages for libel amounting to RM5m, an unspecified amount as aggravated damages, interest at 4% from 7 June 1993 (the date of publication) on the sums awarded, and costs.

The defence

The defendant pleaded that it had only purchased the business and assets of Visia from the receivers and managers of Visia by the agreement dated 10 December 1993. The defendant further contended that the police report was lodged to protect Visia's interest and rights concerning the said property since the purchaser had applied to Visia for a housing loan in order to purchase the said property from the developer. The defendant further denied that the words in the police report and in the complaint to the Bar Council contained the meaning given to them by the plaintiff. In its defence the defendant disclosed that LS Chua & Co refunded the sum of RM86,282.12 by a post dated cheque to Visia as a result of its failure to register the charge and also informed Visia by a letter that the purchasers intended to redeem the said property from Visia. When the defendant received a letter dated 21 September 1987 from the purchasers' solicitors that the transfer of the said property and the charge had yet to be effected despite the lapse of about 4 years after the sale and purchase agreement had been executed, it was then that Visia instructed fresh solicitors (TK Lim &

Co) in September 1987 to make a search and to ascertain the actual position. It was then that the defendant discovered that the said property had been charged to MUF and that the said charge was registered to MUF on 12 October 1983, that is, six days before Visia had released the loan of RM85,000 to LS Chua & Co. Visia then immediately lodged a private caveat against the said property in order to ensure that no further transactions take place with respect to the said property which might prejudice the defendant's rights and interest. Further, the defendant could not recover the sum stated in the post dated cheque from LS Chua & Co, as the same was dishonored upon presentation for payment. Subsequently LS Chua personally paid a sum of RM16,000 in part settlement of the full sum. It was the case of the defence that it never received the title deed to the said property and the charge documents from LS Chua & Co.

It was specifically pleaded in the defence that the defendant was within its rights to lodge a police report due to the fact that it was the plaintiff who had attended to and attested to the sale and purchase agreement, the discharge of charge, the transfer and the charge in respect of the said property. Further, since MUF itself had lodged a police report, as the chargee of the said property, the defendant herein also decided to lodge its own police report to protect its own interest. The report to the Bar Council was a sequelae to the events that followed. The defendant pleaded qualified privilege and relied on s 12 of the Defamation Act 1957 ('the Act'). The defendant also pointed to the inordinate delay of the plaintiff in commencing this action.

Findings of the court

Since the defence was qualified privilege the defence agreed to submit first. This case is clearly illustrative of the danger of allowing the same solicitor to act both for the purchasers and for the financiers. On the one hand LS Chua & Co informs MUF that a charge has been registered in its favour whilst in the same breadth the said legal firm informs Visia that the land is free of encumbrance. To my mind this whole sordid episode could have well been avoided if the plaintiff had done his job properly. Section 211 of the National Land Code 1965 ('the NLC') specifically deals with attestation of instruments of dealing. It reads as follows:

> Attestation of instruments of dealing
>
> (1) Every execution by a natural person of any instrument effecting any dealing under this Act shall be attested in accordance with the following provisions of this section by one of the officers or other persons specified in that behalf in the Fifth Schedule:
>
> Provided that this requirement shall not apply to the execution of any such instrument by —
> (i) the State Director,
> (ii) the Registrar,
> (iii) any Land Administrator,
> (iv) any officer of the Court, or
> (v) the Official Administrator.

(2) The attestation clause to be used in any case shall be that shown in Form 13B; and the position thereof in the instrument shall be immediately after the execution to which it relates.

(3) The officer or other person attesting any execution pursuant to this section shall sign the attestation clause and, if he has a seal of office, authenticate his signature with that seal.

The Fifth Schedule referred to in s 211 of the NLC states as follows:

OFFICERS OR OTHER PERSONS TO ATTEST EXECUTIONS OF INSTRUMENTS EFFECTING DEALINGS UNDER ACT

1 Every execution by a natural person of any instrument effecting any dealing under this Act, other than an instrument in respect of any land referred to in para 3, shall be attested by any of the following officers or other persons:

(1) In any State to which this Act applies:

(a) a Magistrate;

(b) the State Director;

(c) the Registrar;

(d) a Land Administrator;

(e) an advocate and solicitor;

(f) a notary public.

To my mind it cannot be over emphasized that much importance has been placed upon the act of attestation. Only six persons are allowed to attest and it is not a matter of any insignificant importance that an advocate and solicitor has been placed in that high level of trust as to be given the right to attest. To emphasize further the importance attached to attestation, s 211(2) of the NLC specifically spells out the format of the attestation which is specified as Form 13B. The form of attestation clause as specified and as filled up by the plaintiff reads as follows:

> Saya Albert Chew yang beralamat di No 33–A, Jalan Ismail, Batu Pahat, Johore sebagai Peguambela dan Peguamcara di Mahkamah Tinggi, Malaya dengan ini mengaku bahawa tandatangan Wakil Pemegang Gadai yang di atas itu telah ditulis di hadapan saya pada 6 August 1984 dan adalah
>
> *(a) mengikut pengetahuan saya sendiri
> tandatangan yang benar bagi — Goh Hock Chuan wakil bagi Malayan United Finance Bhd
> yang telah mengaku kepada saya
>
> (i) bahawa ia adalah cukup umur,
>
> (ii) bahawa ia telah menyempurnakan suratcara ini dengan sukahatinya sendiri, dan
>
> (iii) bahawa ia faham akan kandungan suratcara itu dan natijahnya.
>
> (iii) Disaksikan dengan tandatangan saya pada 6 haribulan August 1984.
>
> Sgd
>
> … … …
> Peguambela & Peguamcara
> Albert Chew
> Peguambela & Peguamcara

The plaintiff admitted in his evidence that the signature which he said was signed in his presence and/or before him, was indeed never signed in his presence. In other words, the advocate and solicitor had falsified the attestation. He had breached a code so fundamental to the legal profession that the excuse he gave that it was a practice of the legal firm to do as he did, makes the commission even more heinous. I am told that many legal firms still resort to this procedure of having the bank manager or official sign the documents in his office and that it is subsequently sent to the solicitor for attestation. At times the solicitor is given sample signatures of the signatory to the charge documents from the bank. If this practice is widespread, then perhaps it is time it is stopped.

To my mind this initial misconduct of the plaintiff is the causa causans for the defendant to lodge a police report and the complaint to the Bar. If this court accepts the plaintiff's explanation that it is the practice of most legal firms to do as he did then it would be tantamount to condoning an illegal or improper act, by this court.

Having read and re-read the police report and the complaint to the Bar many times, I cannot find it anywhere stated that the plaintiff was the author of the forged document. All that the defendant says is that the plaintiff has attested as true, a document which is not a true document. At this stage it is necessary to define the meaning of 'to attest'. *Black's Law Dictionary* (6th Ed) defines at p 127/128 the meaning of 'attest' and 'attestation'. They read as follows:

> *Attest.* To bear witness to; to bear witness to a fact; to affirm to be true or genuine; to act as a witness to; to certify; to certify to the verity of a copy of a public document formally by signature; to make solemn declaration in words or writing to support a fact; to signify by subscription of his name that the signer has witnessed the execution of the particular instrument. *Lindsey v Realty Trust Co, Tex Civ App* 75 SW 2d 322, 324; *City Lumber Co of Bridgeport v Borsuk* 131 Conn 640, 41 A 2d 775, 778. Also the technical word by which, in the practice in many of the states, a certifying officer gives assurance of the genuineness and correctness of a copy. Thus, an 'attested' copy of a document is one which has been examined and compared with the original, with a certificate or memorandum of its correctness, signed by the persons who have examined it. See Affirmation; Jurat; Oath; Verification.
>
> *Attestation.* The act of witnessing an instrument in writing, at the request of the party making the same, and subscribing the name of the witness in testimony of such fact. In *Re Carlson's Estate* 156 Or 597, 68 P 2d 119, 121. See Affirmation; Jurat; Oath; Verification.

The plaintiff has, therefore, pursuant to the meaning to be given 'to attest', certified to the genuineness and correctness of an untrue copy. It is my judgment that the defence of qualified privilege must succeed in this case. The defendant had a duty to report because of a serious allegation of forgery. The plaintiff counters by saying that the defendant had no business to negotiate with LS Chua personally to settle the matter and that only after failing to recover the full balance the defendant sought to lodge a report and a complaint against the plaintiff. Further, the decision of Richard Talalla J in Civil Suit 22–44–89 seemed to exonerate the plaintiff. I have read the

unreported judgment. This suit involved an application by the plaintiff (Visia) to join the plaintiff in the present suit, as a co-defendant. The said application was heard by the learned senior assistant registrar who dismissed it. The learned judge dismissed the appeal on the grounds that the claim against the present plaintiff was time barred and that the cause of action against him was a new cause of action not pleaded in the suit. Having read the unreported judgment I find that the learned judge was never addressed on the issue of the present plaintiff's attestation of the discharge of the charge. In the circumstances, nothing in that judgment relates to the plaintiff's misconduct. In my view, the defendant is certainly entitled as a financier to recover as much as it could. Having had a promise by LS Chua personally to make good the full sum, and his cheque having bounced, I cannot fault the defendant for lodging a police report and a complaint to the Bar to investigate the whole matter. To my mind, the defendant had a legal duty to lodge a report relating to the plaintiff's misconduct for this simple reason. If the discharge of charge which the plaintiff was alleged to have attested to was a genuine and a true document then the MUF charge would have been discharged and the defendant's charge would have been duly registered. In those circumstances I cannot fault the defendant for lodging the police report and the complaint to the Bar.

It now rests with the plaintiff to show if there was malice to negate the defence of qualified privilege. The plaintiff has argued that there was malice because the defendant knew that it was LS Chua who had done the fiddle and not the plaintiff and that it was on this score that the defendant had negotiated with LS Chua. It was argued that the defendant was a mere legal assistant, bound to do as instructed by his employer.

Perhaps this case ought to give all legal assistants the justification to have the courage of their conviction to tell their respective employers that they will not be a party to any illegal or improper conduct. If the legal assistant knowingly and willingly condones an illegal act of the firm without acting against such misconduct then he shall be a party to it and cannot in my view plead either ignorance, or duty, as a mode of exculpation. Legal assistants must have the moral fibre to stand up to the machinations of ignoble employers. Neither the promise of partnership nor the allurement of bountiful bonuses should lure an advocate into the pitfall of an improper practice. He must stand up as a vociferous sentinel against impropriety. For how else can the legal profession wear the armor of righteousness and fight against wrongs that so proliferate. If every legal assistant will have the moral, religious and self-imposed duty to say no to what his conscience dictates is illegal or improper, only then shall we see the birth of a renaissance in legal thinking. It is a difficult and arduous demand. It calls for a resurgence of altruistic principles. It may take time. But it is my fervent desire that this judgment will be a linchpin for such a metamorphosis.

Whilst the plaintiff has very clearly pointed out to me that the defendant had in fact released the loan on the basis of the three letters earlier referred to and that the document that the plaintiff had attested to had no telling effect, I cannot accept this argument to form the basis of the plaintiff's complaint. The plaintiff had submitted that Visia had been wheeling and

dealing and negotiated 'with a known crook', namely, LS Chua. Be that as it may, surely two wrongs cannot make a right. The plaintiff himself is guilty of improper conduct. In fact under cross-examination the plaintiff readily agreed that had it been his file from inception, he would have before attesting the discharge checked, (1) to see if the redemption sum had been paid, and (2) whether the original charge was also enclosed. In this case he failed to do so.

Since I have accepted the defence of qualified privilege it is my judgment that this suit ought to be dismissed with costs.

Another factor that I have to take into consideration is the plaintiff's unmitigated delay in filing this suit. His explanation that he was emotionally upset cannot be a sufficient and valid reason for failing to forthwith file a suit to vindicate his reputation. He filed this suit hardly a month or two before the six year limitation period had set in. He has given no satisfactory explanation why he carried on with wounded feelings for almost six years.

Claim dismissed.

Reported by Jafisah Jaafar